



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND  
2531 JEFFERSON DAVIS HWY  
ARLINGTON VA 22242-5160

IN REPLY REFER TO

4330

Ser: 00L21/081

10 Jul 97

MEMORANDUM FOR THE DEPUTY COMMANDER FOR CONTRACTS  
ASSISTANT DEPUTY COMMANDER FOR CONTRACTS

Subj: DELEGATION OF AUTHORITY TO ENTER INTO PROTOTYPE  
PROJECTS

Ref: (a) ASN(RDA) memo of 21 Feb 1997, same subject

1. As authorized by reference (a), you are hereby delegated the authority to enter into prototype projects under Section 845 of the National Defense Authorization Act for Fiscal Year 1994, as amended by Section 804 of the National Defense Authorization Act for Fiscal Year 1997. Unless extended, this authority expires 30 September 1999.

2. This authority may not be redelegated.

A handwritten signature in cursive script, reading "G. R. Sterner", is positioned above the printed name and title.

G. R. STERNER  
Commander



*COPY TO DDs*

THE ASSISTANT SECRETARY OF THE NAVY  
(Research, Development and Acquisition)  
WASHINGTON, D.C. 20380-1800

FEB 21 1997

*CDR [Signature]*  
*CD* —  
*CDR* —  
*CDR* —

MEMORANDUM FOR CHIEF OF NAVAL RESEARCH  
COMMANDER, NAVAL AIR SYSTEMS COMMAND  
COMMANDER, NAVAL SEA SYSTEMS COMMAND  
COMMANDER, SPACE AND NAVAL WARFARE SYSTEMS  
COMMAND  
COMMANDER, MARINE CORPS SYSTEMS COMMAND

Subj: DELEGATION OF AUTHORITY TO ENTER INTO PROTOTYPE  
PROJECTS

Encl: (1) USD(A&T) memo of 14 Dec 1996, "Authority to Carry  
Out Certain Prototype Projects"

You are hereby delegated authority to enter into prototype projects under Section 845 of the National Defense Authorization Act for Fiscal Year 1994, as amended by Section 804 of the National Defense Authorization Act for Fiscal Year 1997. Unless extended, this authority expires 30 Sep 1999. This authority is intended to facilitate innovation, and I encourage you to take full advantage of its flexibility.

Enclosure (1) sets forth DOD policy on the use of this authority, including reporting and notification requirements. Submit information needed to prepare Department of the Navy reports to the Chief of Naval Research. Submit the notification prior to use as a precursor to a major defense acquisition program via ASN(RDA) (ABM).

This authority is redelegable only to the Vice Commander, Executive Director, Head of Contracts, or to equivalent positions.

*[Signature]*  
John W. Douglass

ACQUISITION AND  
TECHNOLOGYTHE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-3010

DEC 14 1996

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
DIRECTORS OF DEFENSE AGENCIESSUBJECT: 10 U.S.C. 2371, Section 845, Authority to Carry Out  
Certain Prototype Projects

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, authorizes the Director of DARPA to enter into transactions (other than contracts) under 10 U.S.C. 2371, for certain prototype projects. The authority under section 845 was to terminate November 30, 1996. Section 804 of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, extends the authority of section 845 through September 30, 1999, and makes it available to the Secretaries of the Military Departments and any other official designated by the Secretary of Defense. The Secretary of Defense delegated his authority and assigned his responsibilities, under the amendments made to section 845 by section 804, to me. I designate the Directors of the Defense Agencies as having the authority to use section 845 as authorized by subsection 804(a).

Section 845 authorizes use of instruments that are alternatives to contracts for the covered prototype projects. Section 845 requires, to the maximum extent practicable, use of competitive procedures when entering into "other transactions." To the extent that a particular statute or regulation is limited in its applicability to the use of a contract, it would generally not apply to an "other transaction." Attachment 1 is a list of statutes that apply to procurement contracts, but that are not necessarily applicable to "other transactions." The list is provided for guidance only, and is not intended to be definitive. To the extent that a particular requirement is a funding or program requirement or is not tied to the type of instrument used, it would generally apply to an "other transaction." Each statute must be looked at to assure it does or does not apply to a particular funding arrangement using an "other transaction." Use of section 845 authority does not eliminate the applicability of all laws and regulations. Thus, it is essential that counsel be consulted when an "other transaction" will be used.

Section 845 may be used to carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be



acquired or developed by the Department. When a prototype project, under the authority of section 845, is used as a precursor to a major defense acquisition program, I expect to be advised of the transition strategy for follow-on contracts at least 30 days prior to award of the "other transaction" that initiates the prototype project. The transition strategy must also address how the DoD 5000.1 and DoD 5000.2R requirements will be applied to the acquisition program.

I believe it is essential that section 845 instruments incorporate good business sense and appropriate safeguards to protect the government's interest. This includes assurances that the cost to the government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote on-time performance.

Annual congressional reporting requirements are established in 10 U.S.C. 2371(h), as modified by section 267 of Public Law 104-201. These requirements also apply to prototype projects under section 845. Each military department and defense agency using section 845 authority shall submit a report to OUSD(A&T)/DDP annually, by November 15, that includes all information required by 10 U.S.C. 2371(h), and that summarizes section 845 lessons learned for each prototype project. The format and content for this submission are at Attachment 2. In addition, users of section 845 may submit lessons learned at any time for inclusion in the Defense Acquisition Deskbook. The Deskbook will also be used to provide discretionary guidance and further information.

I encourage you to use the flexibility provided by this authority and to issue any further guidance you deem necessary. If you delegate authority to use section 845, I expect it will be to officials whose level of responsibility, business acumen, and judgment enable them to operate in this relatively unstructured environment. If we use this authority wisely, I will request that it be extended or made permanent by the Congress.

*Paul Kaminski*

Attachments

Paul G. Kaminski

**STATUTES APPLICABLE TO "OTHER TRANSACTIONS"**

1. Competition in Contracting Act, Pub. L. No. 98-369 (1984), as amended - Promotes the use of competitive procurement procedures and prescribes uniform government-wide policies and procedures regarding contract formation, award, publication, and cost or pricing data (truth in negotiations). See DoD coverage generally at chapter 137 of title 10, United States Code, particularly sections 2301-2305.
2. Contract Disputes Act, Pub. L. No. 95-563 (1977), as amended, 41 U.S.C. 601 et seq. - Provides for the resolution of claims and disputes relating to government contracts.
3. Procurement Protest System, Subtitle C of Competition in Contracting Act, Pub. L. No. 98-369 (1984), 33 U.S.C. 3551 et seq. - Provides statutory basis for procurement protests by interested parties to the Comptroller General.
4. Public Law 85-804, 50 U.S.C. 1431-1435, Extraordinary contractual relief - Authorizes such remedies to contractors as formalization of informal commitments, amendments without consideration, and correction of mistakes, and permits indemnification for unusually hazardous risks.
5. 10 U.S.C. 2207. Expenditure of appropriations: limitation - Permits termination of contracts upon a finding that the contractor has offered or given gratuities to obtain a contract.
6. 10 U.S.C. 2306. Kinds of contracts - Prohibits use of cost-plus-a-percentage-of-cost system of contracting; requires a covenant against contingent fees paid to obtain contracts; limits fee amount on virtually all cost-type contracts.
7. 10 U.S.C. 2313. Examination of records of contractor - Provides agency and GAO access to contractors facilities to audit contractor and subcontractor records and gives the DCAA subpoena authority.
8. 10 U.S.C. 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment (to R&D contractors).
9. 10 U.S.C. 2354. Contracts: indemnification provisions - Indemnification authority against unusually hazardous risks for R&D contractors.
10. 10 U.S.C. 2393. Prohibition against doing business with certain offerors - Prohibition with respect to solicitation of offers and contract awards to contractors that have engaged or are suspected to have engaged in criminal, fraudulent, or seriously improper conduct.

Attachment 1

11. 10 U.S.C. 2403. Major weapon systems: contractor guarantees.
12. 10 U.S.C. 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors - Generally, convicted felons precluded from working in a managerial capacity on DoD contracts.
13. 10 U.S.C. 2409. Contractor Employees: protection from reprisal for disclosure of certain information. Whistle blower protection to contractor employees.
14. 31 U.S.C. 1352. Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions - Prohibits use of funds to influence or attempt to influence government officials or members of Congress in connection with the award of contracts, grants, loans, or cooperative agreements.
15. Antikickback Act of 1986, 41 U.S.C. 81-88 - Prohibits kickbacks in connection with government contracts; provides civil and criminal penalties.
16. Procurement Integrity Act, section 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423 - Imposes civil, criminal, and administrative sanctions against individuals who inappropriately disclose or obtain source selection information or contractor bid and proposal information.
17. Service Contract Act, 41 U.S.C. 351 et seq., Walsh Healey Act, 41 U.S.C. 35-45; Fair Labor Standards Act, 29 U.S.C. 201-219 - Provide protections for contractor employees.
18. Drug-Free workplace Act of 1988, 41 U.S.C. 701-707 - Applies to contracts and grants.
19. Buy American Act, 41 U.S.C. 101-1. Applies only in part to "other transactions."